

October 2, 2017

EX PARTE NOTICE VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: CC Docket No. 02-6, *Schools and Libraries Universal Service Support Mechanism*

Dear Ms. Dortch:

On Thursday, September 28, 2017, Brett Robinson, Chloe Wasserman and Selvon Smith of the Brooklyn Public Library (the "Library"), and C. Sean Spivey and the undersigned, counsel to the Library, met separately with (1) Jay Schwarz, Wireline Advisor to Chairman Pai; (2) Claude Aiken, Wireline Legal Advisor to Commissioner Clyburn; (3) Nathan Eagan, Acting Wireline Legal Advisor to Commissioner Carr; and (4) Ryan Palmer, Elizabeth Drogula, and Kate Dumouchel of the Telecommunications Access Policy Division of the Wireline Competition Bureau, to discuss the Library's pending Application for Review and Request for Review in the above-reference proceeding.¹ Both filings seek to reverse a decision by the Universal Service Administrative Company ("USAC") to uphold a 2017 Commitment Adjustment ("COMAD") letter demanding repayment to USAC of the Library's 2014 E-rate funding. Further, on Friday, September 29, 2017, Messrs. Robinson, Smith and Spivey and the undersigned spoke by phone with Travis Litman, Acting Legal Advisor to Commissioner Rosenworcel, regarding the same matters. Finally, on Monday, October 2, 2017, Messrs. Robinson and Smith, Ms. Wasserman, Mr. Spivey and the undersigned spoke by phone with Amy Bender, Wireline Legal Advisor to Commissioner O'Rielly regarding the Library's filings.

During the meetings, the Library representatives provided background on the Library's nearly two decades of untarnished participation in the FCC's E-rate program. The Library representatives described the Library's important role in the Brooklyn community (including the fact that the Library is the largest provider of free Internet service in the borough), the robust programming the Library provides and, most importantly for E-rate purposes, the 2.2 million computer sessions across 1,600 devices the Library provided last year.² The Library representatives also described the Library's competitive bidding process for the 2014 E-rate Funding Year and explained how a unique and unintentional clerical error caused the Library to mistakenly designate as the winner of its E-rate compliant competitive bidding process a service provider that should not have been so designated.

¹ See Application for Review by Brooklyn Public Library, CC Docket No. 02-6 (filed Aug. 18, 2017); Request for Review by Brooklyn Public Library of Decision of Universal Service Administrator, CC Docket No. 02-6 (filed Aug. 18, 2017).

² See Brooklyn Public Library, Institutional Overview (attached hereto).

If the Library is forced to repay the E-rate support it received for the 2014 Funding Year, it will have to significantly reduce its discretionary spending next year. In their communications, the Library representatives pointed out that the amount of money demanded for repayment in the COMAD letter would be sufficient to cover the purchase of over 30,000 books and that no funding sources have been earmarked to pay back this amount. The Library representatives also noted that the FCC has previously called into question the inequities of the E-rate competitive bidding rules in several contexts.³ They urged the FCC to either find that the Library's conduct did not violate the competitive bidding rules or, in the alternative, waive the rules in this instance based on the fact that the Library's bidder evaluation process was designed to select the most cost-effective bidder and complied with the FCC's competitive bidding rules; the Library has been a model steward of E-rate funds since the program's inception; the important services the Library provides and the corrective measures the Library has taken to ensure that it never makes the same unintentional clerical error again. The Library representatives also noted that the entire Brooklyn delegation in the U.S. House of Representatives supports granting the Library relief from USAC's decision.⁴

Pursuant to Section 1.1206(b) of the Commission's rules, I am filing this letter electronically in the above-referenced docket. Please contact me directly with any questions.

Respectfully submitted,

/s/ Ari Q. Fitzgerald

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Attachments (3)

cc (via email):

Jay Schwarz
Claude Aiken
Amy Bender
Nathan Eagan
Travis Litman
Ryan Palmer
Elizabeth Drogula
Kate Dumouchel

³See Brooklyn Public Library, Restoring Fairness and Equity in the E-Rate Program (attached hereto).

⁴See Letter from The Hon. Yvette D. Clarke, Daniel M. Donovan, Jr., Hakeem Jeffries, Jerrold Nadler, Carolyn B. Maloney and Nydia Velazquez to The Hon. Ajit Pai, Mignon Clyburn and Michael O'Rielly, Aug. 8, 2017 (attached hereto).

A wide-angle photograph of the Brooklyn Public Library building, a large, modern structure with a prominent central entrance and a long, low profile. The building is surrounded by a city street with some trees and other buildings in the background.

BROOKLYN PUBLIC LIBRARY

Institutional Overview

FAST FACTS

- Brooklyn Public Library was established in **1896** and today is the **fifth-largest** library system in the nation, with **60 libraries** located throughout the borough.
- Most of Brooklyn's 2.6 million residents live within a **half-mile** of a BPL branch.
- BPL's collection holds more than **4 million** physical items and **65,000** eBooks.
- Last year, Brooklyn Public Library:
 - Offered over **65,000 free programs**, with nearly **1 million attendees**.
 - Logged **15 million** checkouts of our books and electronic media.
 - Hosted **2.2 million computer sessions** on 1,600 devices.
 - Received **85,000 hours** of service contributed by **2,000 volunteers**.
 - Welcomed **8.7 million visits** to our branches.
 - Offered print and digital materials, translation services and programs in **39+ languages**.
- Brooklyn Public Library was awarded the 2016 National Medal for Museum and Library Service, the nation's highest honor for museums and libraries.

A wide-angle photograph of the Brooklyn Public Library building, a large, modern structure with a light-colored facade and a prominent entrance. The building is situated on a city street with a sidewalk and a road in the foreground. The text "BROOKLYN PUBLIC LIBRARY" is visible above the entrance.

BROOKLYN PUBLIC LIBRARY

Community Overview

FAST FACTS

- Brooklyn Public Library serves 2.6 million Brooklyn residents.
- Brooklyn's diverse population is 33.5% black/African-American, 43.4% white, 11.5% Asian and approximately 19.6% Latino.
- 23.2% of Brooklynites live below the federal poverty level, including 32.9% of children under the age of 18.
- Brooklynites speak nearly 90 languages, come from 130 countries and represent 180 ethnicities.
- 46.6% of Brooklynites speak a language other than English at home, with 23.6% speaking English less than "very well."

(According to the U.S. Census Bureau, 2015 American Community Survey)

WHAT WE DO

ADULT LEARNING & LITERACY—Classes for beginning adult readers and writers, ESOL services, Pre-High School Equivalency and citizenship exam preparation, financial literacy classes and job readiness programs and resources.

BOOK-A-LIBRARIAN—Library users can reserve a free half-hour session with a reference librarian at Central Library.

BOOKMATCH—Provides patrons with reading lists specially curated for them by BPL librarians.

BOOKMOBILE—Since 1951, delivering library collections and services to Brooklynites where they live, work and play.

BROOKLYN COLLECTION—BPL's local history division, providing a wealth of information about the borough, including access to research materials such as the fully digitized 1841-1955 run of *The Brooklyn Daily Eagle*. An invaluable resource for students and researchers.

BROOKLYN CONNECTIONS—History program for elementary, middle and high school students (grades 4 to 12), focusing on primary and secondary source research skills and analysis, plus professional learning opportunities for teachers.

BROOKLYN CULTURAL ADVENTURES PROGRAM AND BCAPTEEN CREATIVE LEADERSHIP PROJECT—Award-winning summer day camp for children 7 to 12 and teen digital media program, providing thematically linked adventures at six partner institutions including BPL, Brooklyn Botanic Garden, Brooklyn Museum, Brooklyn Children's Museum, Prospect Park and Prospect Park Zoo.

BROOKLYN EAGLES LITERARY PRIZE—Annual prize awarded to authors who have lived in Brooklyn, portrayed the borough in their work or addressed themes relevant to its life and culture.

BUSINESS & CAREER CENTER—Offers thousands of materials and dozens of programs to help local entrepreneurs launch and grow their businesses. Hosts the annual PowerUP! Business Plan Competition.

COLLECTIONS—Over 3.9 million books and electronic materials, all available for free.

CREATIVE AGING—Helps seniors express their creativity and make important social connections through sequential artist-led workshops, including singing, photography, dance and watercolor classes in our branches and at community centers throughout the borough.

DIGITAL LITERACY—Free computer and technology classes for beginning and advanced users; sophisticated animation, audio engineering, coding and other resources. Technology resource specialists in every branch to assist patrons. BPL is one of the borough's largest providers of free wireless internet access.

THE DR. S. STEVAN DWECK CULTURAL CENTER—A fully accessible performance venue in Central Library that presents over 200 free annual public programs, including author talks, film screenings, live music and lively public affairs forums.

EXHIBITIONS—Rotating seasonal exhibitions showcasing works by renowned and emerging local and international artists, and featuring a range of genres including photography, prints, illustration and artists' books.

FIRST FIVE YEARS—A suite of early literacy programs for infants, toddlers, preschoolers and their parents and caregivers.

IDNYC—Central Library hosts an enrollment center for New York City's municipal ID program.

INCLUSIVE LIBRARY SERVICES—Inclusive play, learning environments for children and teens with or without disabilities; programs and resources for parents and caregivers.

OUR STREETS, OUR STORIES—An oral history project chronicling decades of transformation in Brooklyn.

OUTREACH SERVICES—Library services for traditionally underserved populations, including veterans, immigrants, the homebound and people transitioning into or out of the city's correctional and shelter systems.

SERVICES FOR OLDER ADULTS—Programs, resources and events designed to help older adults participate in the life of their communities—including lectures, films, performances and classes. The Books-by-Mail and Books-to-Go programs provide library materials to senior centers, nursing homes and the homebound.

SHELBY WHITE AND LEON LEVY INFORMATION COMMONS—Technology center at Central Library with a recording studio, meeting rooms, sophisticated design software and a digital training lab. Provides writers, entrepreneurs, tech professionals and other users with an inspiring, open space in which to work, create and collaborate.

SUMMER READING—BPL's borough-wide effort to promote recreational reading during the summer months.

TODAY'S TEENS, TOMORROW'S TECHIES (T4)—Teaches digital skills to students 14 to 18 and prepares them to serve on BPL's volunteer team, where they help patrons make use of the Library's many free technology resources.

VOLUNTEER SERVICES—Over 2,000 volunteers serve BPL patrons each year, providing free homework help, computer classes, resume assistance, English conversation groups and more.





Restoring Fairness and Equity in the E-Rate Program

Absent Commission Action, Brooklyn Public Library Will Be Forced to Significantly Reduce the Technology Access it Provides Throughout the Brooklyn Borough

- **Brooklyn Public Library is one of the oldest libraries in the country.**
 - The Library is the fifth-largest public library system in the U.S.
 - The Library operates 60 libraries throughout Brooklyn and boasts over 1.6 million cardholders.
 - The Library provided over two million personal computer sessions on its more than 1,400 PCs in the last fiscal year.
- **The Library created a rule-compliant competitive bidding process.**
 - The Library created a Bid Evaluation Matrix with a separate evaluation criteria for price and weighted this criteria most heavily.
 - The Library used the Bid Evaluation Matrix to award the lowest-priced bidder the most points for the price criteria.
- **A unique clerical error caused the Library to select a service provider that did not submit the lowest-priced bid.**
 - The Library's only error during the competitive bidding process was transposing the point awards for the price criteria for the other two bidders. This resulted in the Library selecting a vendor other than the lowest-priced bidder.
- **Upholding USAC's decision will create significant disruption in technology services throughout the Brooklyn Public Library system next year.**
 - The Library estimates that it will need to materially reduce its operating budget for key items such as technology if it is forced to return its E-rate funding award for the 2014 Funding Year.
 - This result is inequitable in light of the Library's 20 year history of model stewardship of E-rate funds.
- **Chairman Pai has previously criticized the inequities of the E-rate competitive bidding rules.**
 - In 2014, then Commissioner Pai called the penalty for E-rate paperwork mistakes, such as forfeiting entire funding commitments, "harsh."
 - The FCC has held that "recovery may not be appropriate for violation of all rules *regardless of the reason for their codification.*"
 - The FCC sought comment on changing the full reimbursement rule in its 2013 *E-rate Modernization NPRM* and has not yet ruled on this issue.



HOUSE OF REPRESENTATIVES
WASHINGTON, D. C. 20515

August 8, 2017

Federal Communications Commission
445 12th Street SW
Washington, DC 20554

RE: Support for Brooklyn Public Library waiver request/appeal

Dear Chairman Pai, Commissioner Clyburn and Commissioner O'Rielly:

We, the undersigned, are members of the United States House of Representatives who represent diverse communities all across the great borough of Brooklyn, NY. We are writing in support of Brooklyn Public Library's (BPL's) request for a waiver of the Federal Communication Commission's (FCC's or Commission's) competitive bidding rules¹ filed on May 22, 2017.² A unifying factor across all of our wonderfully different and diverse districts is the incredible service the Brooklyn Public Library provides to our constituents. We are concerned that the FCC's decision to require BPL to fully refund federal E-rate funding from FY2014 – based solely on an admitted clerical error – will have significant impacts on the individuals and families we represent.

We understand that in FY2014, BPL conducted a competitive bidding process to select a vendor to provide E-rate-funded digital transmission and internet access services. BPL, which has received E-rate funding for these purposes for nearly 20 years with absolutely no issues, set bidding evaluation criteria consistent with the FCC's rules and otherwise conducted the bidding process in a good-faith manner. However, BPL made a clerical error during the scoring of competitive bids which led to a service provider being selected who was not, in fact, the lowest-cost bidder. A subsequent audit turned up this error and BPL acknowledged that it was the result of two numbers being transposed during scoring. We understand that BPL has since instituted additional safeguards to ensure that this sort of clerical error does not occur again in the future. However, the Universal Service Administration Company (USAC) has ruled that BPL violated the FCC's competitive bidding rules and demanded a full refund of the entire \$570,000 funded in FY2014.

BPL has sought a waiver of the FCC's rules, assuming the FCC initially agrees with USAC that BPL's error constituted a violation of the competitive bidding rules. If the FCC and USAC force BPL to fully refund its FY2014 E-rate funding, then BPL will be forced to make major cuts to its technology budget—thereby cutting service to our constituents.³ We further understand that not

¹ 47 C.F.R. §§ 54.504, 54.511.

² See Petition for Waiver by Brooklyn Public Library of Sections 54.504(a)(1)(ix) and 54.511(a) of the Commission's Rules, CC Docket No. 02-6 (filed May 22, 2017) (Waiver Petition).

³ See Waiver Petition at 8-9.

only has BPL acknowledged its error and taken definitive steps to prevent such mistakes from occurring again, but also put forth an eminently reasonable compromise should a waiver of the full \$570,000 penalty not be granted: BPL has proposed returning only the portion of the funding that represents the cost-difference between what it actually paid and what the lowest bid would have been without the clerical error. This would achieve the goal of reimbursing the federal government for those actual funds which should not have been allocated in the first place – were it not for the error – without needlessly harming Brooklyn residents.


We find such a proposal reasonable and, frankly, we fail to understand what public policy objective would be served by forcing a highly regarded institution like the BPL to cut critically important resources to Brooklyn residents as a penalty for an admitted clerical mistake. Hundreds of thousands of our Brooklyn constituents across the borough rely on the technology services provided by BPL and this decision absolutely will negatively impact them as BPL will be forced to significantly reduce its technology budget.

As noted above, BPL has an exemplary, nearly two-decades-long history of being a responsible fiscal steward for E-Rate funding, and that there is no need to “send a message” or impose such a drastic penalty as some sort of deterrent to prevent similar actions in the future.

Therefore, on behalf of our Brooklyn constituents, we once again urge you to consider the Brooklyn Public Library’s waiver request and work with this community anchor institution to arrive at a more thoughtful and reasonable resolution.


Sincerely,


Congressional Brooklyn Delegation



YVETTE D. CLARKE
Member of Congress


DANIEL M. DONOVAN, JR.
Member of Congress


HAKEEM JEFFRIES
Member of Congress


JERROLD NADLER
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CAROLYN B. MALONEY
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